

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LINDA TOLBERT,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	FILE NO. _____
	:	
PUBLIX SUPER MARKETS, INC.	:	
	:	
Defendant.	:	

PETITION FOR REMOVAL

TO: The Judges of the United States District Court, Northern District of Georgia

Defendant Publix Super Markets, Inc., (“Defendant”) respectfully shows the Court as follows:

1.

A civil action has been brought against the Petitioner in the State Court of Coweta County, State of Georgia, by the above-named Plaintiff, said action being designated as Civil Action No. 20SC0424E in which Plaintiff Linda Tolbert has sued the Defendant Publix Super Markets, Inc. arising out of an alleged slip and fall incident that occurred in the Publix Super Market located at Lower Fayetteville Road, in Newnan, Georgia, on December 20, 2018. Plaintiff filed the within

Complaint on November 4, 2020. The Defendant Answered on December 7, 2020.

2.

The Plaintiff is now, was at the time of the commencement of this action, and at all times since has been a citizen and resident of the State of Georgia.

3.

Defendant Publix Super Markets, Inc., is now, was at the time of the commencement of this lawsuit, and at all times since, a corporation organized and existing under the laws of the State of Florida, having its principal place of business in Lakeland, Florida.

4.

The parties have previously litigated this matter in the State Court of Coweta County. Defendant attaches copies of the following documents that were filed with the State Court of Coweta County:

Exhibit A Summons and Complaint;

Exhibit B Plaintiff's First Interrogatories and Request for Production of Documents to Defendant;

Exhibit C Sheriff's Entry of Service for Publix Super Markets, Inc.;

Exhibit D Answer of Publix Super Markets, Inc.;

Exhibit E Demand for Twelve Person Jury;

- Exhibit F Rule 5.2 Certificate of Service for Defendant Publix Super Markets, Inc.'s First Interrogatories and Request for Production of Documents to Plaintiff;
- Exhibit G Rule 5.2 Certificate of Service regarding Defendant Publix Super Markets, Inc.'s Responses to Plaintiff's First Interrogatories and Request for Production of Documents;
- Exhibit H Plaintiff Linda Tolbert's Responses to Defendant Publix Super Markets, Inc.'s First Interrogatories and Request for Production of Documents;
- Exhibit I Leave of Absence for Robyn M. Roth;
- Exhibit J Defendant's Notice of Substitution of Counsel – James W. Hardee for Robyn M. Roth;
- Exhibit K Leave of Absence for James W. Hardee;
- Exhibit L Defendant's Notice of Deposition of Plaintiff Linda Tolbert;
- Exhibit M Consent Motion to Reopen and Extend Discovery with Proposed Order;
- Exhibit N Order Granting Consent Motion to Reopen and Extend Discovery;
- Exhibit O Defendant's First Amended Notice of Deposition of Plaintiff Linda Tolbert;
- Exhibit P Defendant's Second Amended Notice of Deposition of Plaintiff Linda Tolbert;
- Exhibit Q Rule 5.2 Certificate of Service regarding Defendant Publix Super Markets, Inc.'s First Request for Admissions to Plaintiff and

Requests for Admission; and

Exhibit R Defendant's 4th Amended Notice of Deposition of Plaintiff Linda Tolbert.

5.

In the Plaintiff's discovery responses, the Plaintiff itemized \$56,180.43. Plaintiff's medical treatment consists of two knee surgeries including a right knee arthroplasty.

6.

In the Complaint (Exhibit "A"), filed by the Plaintiff in the State Court of Coweta County, Plaintiff Linda Tolbert asserts that she was injured in a slip and fall incident that occurred at Publix Super Markets, Inc. In the Complaint, the Plaintiff requests special and general damages. In the Plaintiff's Complaint, there is no specific prayer for special, general, or punitive damages. As a result, the Defendant Publix Super Markets, Inc. served upon Plaintiff its First Request for Admissions, attached hereto as Exhibit "Q".

7.

As of the date of filing the within Petition, the Plaintiff has wholly and completely failed to respond to Defendant Publix Super Markets, Inc.'s First Request for Admissions and as such, said Request for Admissions are deemed

admitted, pursuant to Georgia law. These Admissions specifically admit the amount in controversy, exclusive of interests and costs, in this matter exceeds \$75,000.00 and that the Plaintiff seeks to recover special and general damages in an amount greater than \$75,000.00. Again, the Plaintiff has itemized \$56,180.43 in its discovery responses after having to undergo two knee surgeries. The Plaintiff relates these surgeries to the alleged slip and fall occurring at Publix.

8.

Now, within twenty (20) days after Plaintiff's failure to respond to the Defendant's Request for Admissions, the Defendant removes this case to this Court pursuant to 28 U.S.C. § 1446(b) which permits a case to be removed if the case stated by the initial pleading is not removable, but the Defendant later receive other paper (which includes written discovery responses) from which it can be ascertained that the case is one which has become removable, then the Defendants may remove the case to federal court on the basis of diversity jurisdiction provided by 28 U.S.C. § 1332, so long as not more than one-year has expired since the case was commenced on November 4, 2020.

Plaintiff Linda Tolbert could have originally brought this action in this Court under 28 U.S.C. § 1332, in that it is a civil action wherein the amount in controversy

exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and cost, and there is diversity of citizenship between the parties.

9.

If a jurisdictional amount in controversy would have been stated specifically in the Plaintiff's Complaint, this action could have originally been brought in this Court under 28 U.S.C. § 1332, in that it is a civil action wherein the amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and cost, and there is diversity of citizenship between the parties.

10.

Pursuant to 28 U.S.C. § 1441, et seq., and 28 U.S.C. § 1367, this action is now removable by reason of diversity of citizenship, there being more than \$75,000.00 in controversy, exclusive of interest and costs.

WHEREFORE, Defendant Publix Super Markets, Inc. files this Petition for Removal of said cause to this Court.

Respectfully submitted this 8th day of October, 2021

**FAIN, MAJOR & BRENNAN,
P.C.**

One Premier Plaza
5605 Glenridge Drive, N.E.
Suite 900
Atlanta, Georgia 30342
(404) 688-6633
jhardee@fainmajor.com

/s/ James W. Hardee

JAMES W. HARDEE
Georgia State Bar No. 324399
*Counsel for Publix Super
Markets, Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LINDA TOLBERT,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	FILE NO. _____
	:	
PUBLIX SUPER MARKETS, INC.	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

This is to certify that I have this date served upon counsel for the opposing parties in the foregoing matter a copy of the foregoing **Removal Petition** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record as follows:

Graylin C. Ward
Ward Law Office
27 East Broad Street
Newnan, GA 30263
graylincward@gmail.com

This 8th day of October, 2021.

**FAIN, MAJOR & BRENNAN,
P.C.**

/s/ James W. Hardee

JAMES W. HARDEE

Georgia State Bar No. 324399

Counsel for Publix Super

Markets, Inc.

One Premier Plaza
5605 Glenridge Drive, N.E.
Suite 900
Atlanta, Georgia 30342
(404) 688-6633
jhardee@fainmajor.com